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LANSING

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Analysis of Enrolled House Bill 4684

Topic: Intoxicated Persons
Sponsor: Representative Accavitti
Co-Sponsors: Representatives Farrah, Angerer, Gillard, Tobocman, Rocca, Gaffney, Wojno, Ward, Hopgood, Melton, and Meadows
Committee: House Regulatory Reform
Senate Economic Development & Regulatory Reform

Date Introduced: May 1, 2007

Date Enrolled: February 20, 2008

Date of Analysis: February 22, 2008

Position: The Liquor Control Commission was neutral on S-3.

Problem/Background: The Liquor Control Code currently contains several references to the sale of alcoholic liquor to an intoxicated person. Provisions of the Code prohibiting the sale and service of alcohol to visibly intoxicated individuals and permitting a person injured by a visibly intoxicated individual to bring a civil suit are collectively known as the “Dram Shop Act”. References in Section 801 of the Code use the term “visibly”, but references in other sections of the Code refer merely to “intoxicated persons” without using the word “visibly”. The administrative rules of the Liquor Control Commission relating to consumption and loitering by an intoxicated person likewise do not use the term “visibly”.

Description of Bill: The bill amends multiple sections of the Liquor Control Code of 1998. A licensee is prohibited from allowing an intoxicated person to consume alcoholic liquor on the premises. An intoxicated person would not be allowed to loiter on the premises, except under limited conditions specified in the bill (e.g. eating, seeking medical attention, arranging other transportation). A breathalyzer or blood alcohol test is not admissible to prove a violation. In order to prove a violation, the person’s intoxicated condition at the time of the sale or consumption of alcohol must be proven by direct observation by law enforcement, Commission staff, or through other admissible witness statements or corroborating evidence obtained in the investigation.

Five administrative rules are rescinded and their text is inserted into the Code. These include:

- R 436.1005 Selling, serving or furnishing alcoholic liquor to intoxicated persons
- R 436.1009 Sales to minors
- R 436.1011 Gambling and gambling devices
- R 436.1017 Prohibited sales of alcoholic liquor
- R 436.1033 Prohibited sale, possession or consumption and exception

Summary of Arguments

Pro: Consistency is needed among references in the Code to the sale to, and consumption by, intoxicated persons. Licensees want to be protected from being cited in cases that hinge primarily on Blood Alcohol Content (BAC) levels. The law requires them to observe the patron, but they can't necessarily see elevated BAC levels.

The substitute is much improved compared to the original bill. The word "visible", which concerned the Liquor Control Commission, is missing in the Senate substitute.

Con: Taking BAC test results off the table as proof of a violation of Section 1025 of the Code will be an impediment to law enforcement.

Fiscal/Economic Impact

(a) Department

Budgetary: The bill has no budgetary impact on the department.

Revenue: The bill will have no impact on department revenues.

Comments:

(b) State

Budgetary: There is no state budgetary impact.

Revenue: There is no impact on state revenues.

Comments:

(c) Local Government

Comments: The bill may make enforcement of the statutory prohibition against serving liquor to an intoxicated person more difficult.

Other State Departments:

Indicate here if there are other state departments that may have a concern or issue with the bill. Also indicate any concerns/issues that have been conveyed to the department.

Any Other Pertinent Information: The Michigan Licensed Beverage Association supports the bill.

Administrative Rules Impact: The bill rescinds five administrative rules and incorporates the text in the statute.

